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General Assembly
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Agenda item 18
Election of judges of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

Security Council
Sixtieth year

Identical letters dated 6 January 2005 from the Secretary-General addressed to the President of the General Assembly and the President of the Security Council

I wish to bring to your attention two important matters that have a direct impact on the ability of the International Tribunal for the Former Yugoslavia to implement its completion strategy. Both concern the ad litem judges of the Tribunal.

You may recall in this connection that the term of office of the members of the current pool of ad litem judges of the Tribunal will come to an end on 11 June 2005. You may also recall that, under the Tribunal's statute, ad litem judges are not eligible for re-election. All members of the current pool of ad litem judges will therefore cease to be ad litem judges of the Tribunal on 11 June 2005.

The first matter that I wish to draw to your attention concerns a number of ad litem judges whom I have already appointed to serve in the Tribunal for the trial of particular cases.

President Meron has advised me that, of the nine ad litem judges who are currently serving in the Tribunal, two are adjudicating in a case that is due to finish within the next two weeks. The other seven, however, are adjudicating in cases which he anticipates will continue beyond 11 June 2005.

Specifically, ad litem judges Brydensholt and Eser are currently adjudicating, together with permanent judge Agius, in the Orić case. President Meron informs me that it is anticipated that the hearings in this case, which commenced on 6 October 2004, will be completed and judgement handed down in November 2005.

Ad litem judges Rasoazanany and Swart are adjudicating, together with permanent judge Antonetti, in the trial of the Hadžihasanović case. President Meron informs me that it is anticipated that hearings in that case, which commenced on 2 December 2003, will be completed and judgement handed down in September 2005.

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Ad litem judges Thelin and Van den Wyngaert are adjudicating, together with permanent Judge Parker, in the trial of the Limaj case. President Meron informs me that it is anticipated that hearings in that case, which commenced on 15 November 2004, will be completed and judgement handed down in November 2005. In this connection, it may be recalled that, in its decision 59/406 of 19 November 2004, the General Assembly elected ad litem judge Van den Wyngaert as a permanent judge of the International Tribunal. Her term of office as a permanent judge will not commence however until 17 November 2005.

Ad litem judge Canivell is adjudicating, together with permanent judges Orie and El-Mahdi, in the trial of the Krajišnik case. Hearings in that case commenced on 3 February 2003. President Meron has informed me that permanent judge El-Mahdi will be stepping down from that case on 14 January 2005. It has nevertheless been decided that proceedings may continue with a substitute judge sitting in Judge El-Mahdi's stead. Depending on the position that the Security Council and the General Assembly may take with regard to the second matter addressed in the present letter, it is envisaged that proceedings in that case may accordingly continue as early as 14 February 2005. In that event, President Meron informs me that it is anticipated that proceedings in the case should be completed and judgement handed down in April 2006.

If the seven ad litem judges concerned were not allowed to continue to adjudicate in those cases beyond 11 June 2005, it would be necessary to start each trial anew with fresh panels of judges and to order the rehearing of witnesses and the representation of arguments. That would obviously have a serious negative impact on the ability of the Tribunal to achieve the target dates in its completion strategy. It would also have substantial financial consequences.

The statute of the International Tribunal for the Former Yugoslavia does not contain a provision similar to that contained in Article 13, paragraph 3, of the Statute of the International Court of Justice whereby judges continue to discharge their duties until they are replaced and, thereafter, until they finish any cases they may have begun.

In the absence of any such provision, the approval of the Security Council, as the parent organ of the Tribunal, and of the General Assembly, as the organ that elects its judges, would be needed in order to permit the seven ad litem judges concerned to continue to serve in the Tribunal beyond 11 June 2005 and to finish the cases in which they are currently adjudicating, notwithstanding the expiry of their terms of office. I would request that the Security Council and the General Assembly grant such approval.

The second matter that I wish to draw to your attention concerns requests that I have recently received from President Meron that I appoint two additional members from the current pool of ad litem judges to serve in the Tribunal for trying cases. In both cases, it is anticipated that the trials concerned will continue beyond 11 June 2005.

Specifically, President Meron has requested that I appoint ad litem judge Szénási to serve in the Tribunal for the trial of the Halilović case. He informs me that that trial is ready to commence on 24 January 2005 and is expected to last some nine months. If that trial were to commence on 24 January 2005, judgement would accordingly be handed down in October 2005.

President Meron has also requested that I appoint ad litem judge Hanoteau to serve in the Tribunal for the trial of the Krajišnik case. As has been noted above,

that trial is already under way. However, one of the judges who is currently adjudicating in that trial will be stepping down from the case on 14 January 2005. It has nevertheless been decided that proceedings may continue with a substitute judge. President Meron informs me that, if appointed, Judge Hanoteau would be that substitute judge. He also informs me that if Judge Hanoteau is appointed with effect from 18 January 2005, he expects that the judge should be able to familiarize himself with the record of the proceedings in time for hearings to be able to resume as early as 14 February 2005. In that event, it is anticipated that proceedings in the case would be completed and judgement handed down in April 2006.

Having reviewed those requests, it is my view that, except insofar as they would involve the appointment of ad litem judges to trials that would continue beyond their term of office, they comply with the relevant terms of the statute of the Tribunal. Subject to the comments below, it would accordingly be my intention to appoint those ad litem judges to serve in the Tribunal for the trial of the two cases concerned.

However, before I proceed to do so, I would consider it highly desirable that the Security Council and the General Assembly first agree that the judges concerned, if appointed, may continue to serve in the Tribunal for the trials of the cases in question and to finish those trials, notwithstanding the expiry of their term of office. I would therefore request that the Security Council and the General Assembly grant such approval.

President Meron has informed me that he does not anticipate making any further requests that I appoint members of the current pool of ad litem judges to serve in the Tribunal for the trial of cases.

President Meron also informs me that, were the Security Council and the General Assembly to adopt the decisions sought in the present letter, both with regard to the seven ad litem judges who are currently serving in the Tribunal and with regard to the two additional ad litem judges whose appointments are being sought, he does not anticipate that the cumulative period of service of any of the ad litem judges concerned would amount to or exceed three years. The limit on the cumulative length of appointments of ad litem judges laid down in the Tribunal's statute would therefore continue to be observed.

The statutory limit on the number of ad litem judges who may be appointed to serve in the Tribunal at any one time would also continue to be observed.

Were the Security Council and the General Assembly to adopt the decisions sought, no additional financial requirements would arise for the budget of the Tribunal for the biennium 2004-2005. Requirements for the ad litem judges for 2006-2007 would be considered in the context of the Tribunal's proposed budget for the biennium 2006-2007.

I am sure that you will agree that it is highly desirable that every effort be made to ensure that the Tribunal remains in the best possible position to achieve the target dates in its completion strategy. I should accordingly be most grateful if you would bring the present letter to the immediate attention of the members of the General Assembly, under agenda item 18, and of the Security Council in order that they might take appropriate action on the matters that I have raised as soon as possible.

(*Signed*) Kofi A. **Annan**